S.B. CIVIL WRIT PETITION NO.6754/2007

Gotam Kumar Duk.

vs.

A.D.J. No.1, Bhilwara and ors.

Date : 23.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.T Gupta, for the petitioner.
Mr.S Saruparia, for the respondents.

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Heard learned counsel for the parties.

The petitioner/plaintiff is aggrieved against the order of the appellate court dated 2.8.2007 by which the appellate court allowed the appeal of the respondents/defendants and set aside the order of injunction granted by the trial court on 1.7.2006.

Brief facts of the case are that according to the petitioner/plaintiff, the property in dispute belongs to the petitioner by virtue of the patta granted by the UIT, Bhilwara. The patta was granted to the plaintiff by the UIT, Bhilwara on

the basis of some agreement to sale only.

The respondents/defendants' case is that the defendants purchased the property in dispute by registered sale deed and thereafter got it converted from the Land Conversion Officer and a patta was issued in their favour. Thereafter, the defendants obtained permission for construction and started raising construction over the plot in dispute. According to the defendants, the plaintiff is neither the owner of the property nor is in possession of the property. Therefore, the plaintiff was not entitled to the relief of injunction.

The appellate court took note of the fact of rival title claim of the parties and after considering the facts leading to the issuance of patta in favour of both the parties, found that the defendants are in possession of the property, refused the injunction as prayed by the plaintiff/ petitioner.

Learned counsel for the respondents/defendants submits that the respondents have raised substantial construction and the plaintiff in his plaint nowhere stated that the plaintiff/ petitioner is in possession of the property in dispute. It is also submitted that since the

respondents are in possession of the property in question and raised construction, therefore, this Court may not interfere in the impugned order.

Learned counsel for the petitioner submits that the suit involves several disputed question of facts and the petitioner's claim is founded upon the title deed issued by the local body i.e. UIT and the patta issued in favour of the petitioner cannot be ignored. In that situation, the respondents cannot raise construction over the property in dispute during pendency of the suit. It is also submitted that it is settled law that the property is required to be preserved as it is during the pendency of the suit and no one can reach the process of the Court.

I considered the submissions of the learned counsel for the parties and perused the facts of the case.

The appellate court gave cogent reasons for allowing the appeal and there is no jurisdictional error in the impugned order. However, it will be appropriate to held that if the respondents/ defendants raised or will raise any further construction over the plot in dispute, then the

respondents will not be entitled to claim any equity in their favour because of that construction nor it will prejudice the right of the petitioner.

In view of the above, it will be appropriate to direct the respondents/defendants to submit a written undertaking before the trial court that in case, the petitioner/plaintiff will succeed in the litigation, the respondents shall remove the structure standing on the plot in dispute at their own cost and in case, they will fail to do so, the petitioner shall be entitled to remove the structure at the cost of the respondents.

With the aforesaid observations, this writ petition is disposed of.

(PRAKASH TATIA), J.

S.Phophaliya